

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	No. 05-04056-01/02-CR-C-NKL
	)	
Plaintiff,	)	<u>Counts 1-6</u> : Brown only
	)	18 U.S.C. § 1343
v.	)	NMT 20 years and/or \$250,000
	)	Supervised Release: NMT 3 years
DARYL MILES BROWN	)	
[DOB: 1976]	)	<u>Counts 7-8</u> :
	)	18 U.S.C. § 2314
and	)	Count 7: Brown only
	)	Count 8: Both defendants
SYLVESTER L. MITCHELL, III,	)	NMT 10 years and/or \$250,000
[DOB: 1970]	)	Supervised Release: NMT 3 years
	)	
Defendants.	)	<u>Counts 9-11</u> : Brown only
	)	18 U.S.C. § 1957
	)	NMT 10 years and/or \$250,000
	)	Supervised Release: NMT 3 years
	)	
	)	<u>Count 12</u> : Both defendants
	)	18 U.S.C. § 1956(h)
	)	NMT 20 years and/or \$500,000
	)	Supervised Release: NMT 3 years
	)	
	)	<u>Count 13</u> : Both defendants
	)	18 U.S.C. § 371
	)	NMT 5 years and/or \$250,000
	)	Supervised Release: NMT 3 years
	)	
	)	\$100 mandatory penalty
	)	assessment, each Count

S E C O N D   S U P E R S E D I N G   I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

At all times material:

## **INTRODUCTION**

1. From at least as early as in or about December 2004, and continuing through an unknown date, but at least on or about September 15, 2005, the exact dates being unknown to the Grand Jury, DARYL MILES BROWN, defendant, knowingly, willfully and unlawfully devised a scheme and artifice to defraud and to obtain money and property from investors by means of false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made.

2. DARYL MILES BROWN and others, including SYLVESTER L. MITCHELL, III, defendants, by means of false and fraudulent pretenses, representations and promises, which they knew to be false and fraudulent when made, directly and indirectly caused and induced persons to invest funds, enabling defendant BROWN and others to thereby misappropriate and extract money for their own uses.

## **OBJECTS OF THE SCHEME**

3. It was an object of the scheme that DARYL MILES BROWN, defendant, would obtain money from investors by making, directly and indirectly, false representations related to material facts, and omitting and concealing information related to material facts from investors about the true nature of their investments and the intended use of their invested funds, as well as the facts

surrounding the investments.

4. It was also an object of the scheme that DARYL MILES BROWN, defendant, would and did gain a pool of money obtained by the scheme for his own use, and the use of others.

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**BACKGROUND**

5. DARYL MILES BROWN, defendant, was a resident of Columbia, Boone County, Missouri. He was Chairman of The Vertical Group, a Missouri Corporation.

6. CERBERUS, INC. (CERBERUS) was a Missouri corporation, with articles of incorporation issued on November 12, 2002. CERBERUS was dissolved for failure to file its annual reports on January 29, 2004. DARYL MILES BROWN, defendant, represented to investors that he was a principal in CERBERUS.

7. SYLVESTER L. MITCHELL, III, defendant, was a resident of Columbia, Boone County, Missouri. He was originally hired by DARYL MILES BROWN, defendant, for The Vertical Group, a Missouri Corporation, and worked there at BROWN's direction. Additionally, MITCHELL represented himself as the Chief Financial Officer of CERBERUS, INC.

**MANNER AND MEANS OF THE SCHEME AND ARTIFICE TO DEFRAUD**

8. It was part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, would and did use and devise a business structure for soliciting investors and procuring money from them for various investment projects.

9. It was a further part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, put into place an organization and persons within that organization who would and did solicit investments from persons, and sold to these persons what purported to be opportunities to purchase and participate in high yield, short term investments which were unavailable to the general public. These high yield, short term investments varied in name and rate of return, and included, among other instruments and opportunities, what Brown called SBLCs (Stand By Letters of Credit). The investments generally involved a contract with CERBERUS.

10. It was a further part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, would offer to potential investors loan opportunities through one of the companies with which he was associated, in amounts and at rates which were not actually available, and which BROWN, VERTICAL or CERBERUS were incapable of obtaining and/or providing, in order to get those potential investors to consider contributing to his high yield, short term investment opportunities, and other investments.

11. It was a further part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, and others at his direction, would solicit and do business by phone, facsimile and e-mail, and through personal meetings in Columbia, Missouri, and elsewhere. It was an additional part of the scheme for BROWN and

others at his direction to give instructions to the various investors in the CERBERUS and other BROWN-related investment opportunities to wire funds to bank accounts in Florida, and elsewhere.

12. It was part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, at various times, made and caused to be made false and misleading statements, representations and promises to the investors and potential investors in the CERBERUS and other BROWN-related investments which BROWN knew to be false and misleading when made, including, but not limited to the following:

- a) that DARYL MILES BROWN, defendant, was licensed by the Securities and Exchange Commission (SEC) and/or the National Association of Securities Dealers (NASD) and/or the Missouri Secretary of State when, in truth and in fact, he was not licensed;
- b) that DARYL MILES BROWN, defendant, was procuring a license from the SEC and/or the NASD and/or the Missouri Secretary of State for another person when, in truth and in fact, he was not and could not procure the license; and
- c) that DARYL MILES BROWN, defendant, was able to grant certain persons exemptions from licensing.

13. It was part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, made and caused to be made various false and misleading statements, representations and promises regarding what he called SBLCs including, but not limited to:

- a) that the various investors would either 1) receive their initial investment back along with a percentage profit, generally about twenty percent

(20%), within thirty business days, or 2) in other instances that, after thirty (30) business days, investors would be eligible to participate in a loan with a reduced principal investment;

- b) that, in addition to any profits as set forth in (a)(1), additional money could be set aside and reinvested, and would return up to approximately twenty percent (20%) of their initial investment per week; and
- c) that investment in Brown's and CERBERUS' SBLC plan was safe, and that investors' money could not be lost, as it was placed in an escrow account where it was safe and could not be accessed and depleted when, in truth and in fact, the account which held the investors' money could be accessed, and was subject to directions given by DARYL MILES BROWN, defendant.

14. It was a part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, told colleagues and business associates that the SEC had levied fines against CERBERUS and/or VERTICAL for trading violations when, in truth and in fact, the SEC had not levied any such fines. BROWN collected and caused to be collected the money to pay the "fines" from business associates in order to falsely demonstrate that the SEC was regulating CERBERUS and/or VERTICAL, and instead used the money for his own personal gain.

15. It was a part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, would make, did make, and did cause to be made certain false and misleading statements about the extent and quality of his educational, business and financial experience, and his financial worth, in order to attract persons to invest in

the various CERBERUS and other BROWN-related investment opportunities including, but not limited to:

- a) that he had a business degree from the University of Missouri;
- b) that he had played professional football with the National Football League Kansas City Chiefs;
- c) that he had several highly placed business relationships;
- d) that he was involved in and had some control of a multi-million dollar trust; and
- e) that SYLVESTER L. MITCHELL, III, defendant, had a much greater and varied experience in business than he actually possessed.

16. It was a part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, did omit and cause to be omitted certain material facts, which factual omissions, if known, would have discouraged investors from doing business with BROWN, CERBERUS, and his other investment opportunities, including but not limited to:

- a) that money invested with DARYL MILES BROWN, defendant, and CERBERUS was not in a safe account where the principal could not be touched;
- b) that no person selling what Brown called SBLCs for him and/or CERBERUS was licensed by the SEC, the NASD, or the Missouri Secretary of State, as represented;
- c) that the investment vehicles called SBLCs by Brown were not registered;
- d) that several of Brown's prior investment deals generated no profit to investors, and resulted in a total loss of principal; and

- e) that DARYL MILES BROWN, defendant, used investor money for his own personal use and gain.

17. It was a further part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, would and did make, and cause to be made, repeated false representations to investors concerning the use to which the money they had invested was put, and concerning any alleged future appreciation and increase in the value of their investments. In truth and in fact, and as defendant then and there well knew, the money invested was merely commingled with the money invested by others, and the collective money was not used in a way that would cause an increase or appreciation in the value of funds as represented to investors.

18. It was a further part of the scheme and artifice to defraud that DARYL MILES BROWN, defendant, caused an account to be created, which he and SYLVESTER L. MITCHELL, III, defendant, represented contained actual money which was controlled, in part, by BROWN, and was the result of BROWN's investments and, in part, MITCHELL's trading. In truth and in fact, the account did not contain real money, and was a simulated investment account offered by a legitimate business as a demonstration to potential investors. This account was shown to potential investors and others by BROWN and MITCHELL, and was used to induce investors to give BROWN funds.

19. It was a part of the scheme and artifice to defraud that DARYL MILES BROWN and SYLVESTER L. MITCHELL, III, defendants, attempted to forestall discovery of the aforesaid fraudulent



activities, to lull the investors into a false sense of security, and to induce them to forbear from taking steps to recover their money, through such steps as the following:

- a) stating that their investments were stuck in an account due to non-performance by some other business entity;
- b) telephone calls were made and e-mails sent, stating that DARYL MILES BROWN, defendant, had located and was acquiring new investments which would yield the same or slightly lower returns, that the initial investments would be rolled into them, and that money would be wired to them;
- c) checks or money was returned to some investors, purportedly representing either the investors' profits from their participation in Brown's investment programs, interest on their investment(s), or a return of their capital when, in truth and in fact, the money was drawn from the cash contributions of other investors, and was not from any profits generated from alleged investment opportunities; and
- d) stating that a multi-millions dollar transaction had been completed with the aid of Citibank in New York, and that funds were being prepared to be disbursed to the investors when, in truth and in fact, no such transaction had occurred.

20. It was a further part of the scheme and artifice to defraud that DARYL MILES BROWN and SYLVESTER L. MITCHELL, III, defendants, would use investors' funds:

- a) to pay certain investors who had requested a portion of their purported profits;
- b) to provide DARYL MILES BROWN, defendant, with money for his own personal use and gain;
- c) to provide BROWN's family with money which they did not earn as employees or investors;

- d) to provide living expenses, including moving expenses, to a girlfriend of DARYL MILES BROWN, defendant; and
- e) to use for legal expenses of DARYL MILES BROWN, defendant.

**COUNTS 1-6**  
(Wire Fraud)

21. The allegations of paragraphs 1 through 20 are realleged and incorporated herein as if fully set forth again.

22. On or about the dates enumerated below for each count, in the Western District of Missouri, and elsewhere, DARYL MILES BROWN, defendant, and others known and unknown to the Grand Jury, for the purpose of executing a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, did knowingly transmit and caused to be transmitted by means of wire communications in interstate commerce, certain writings, signals and sounds, as more particularly described for each count below:

<b><u>COUNT</u></b>	<b><u>DATE</u></b>	<b><u>WIRE COMMUNICATION</u></b>
1	January 10, 2005	A wire transfer of approximately \$30,000 from Midwest Independent Bank, Jefferson City, Cole County, Missouri, to Bank of America, Clearwater, Florida
2	January 14, 2005	A telephone call from Orlando, Florida, to Boone County, Missouri, authorizing the wire transfer of approximately \$100,000

3	February 1, 2005	A wire transfer of approximately \$300,000 from Edward D. Jones, Ozark, Christian County, Missouri, to Bank of America, Clearwater, Florida
4	February 2, 2005	A wire transfer of approximately \$50,000 from UMB, St. Joseph, Buchanan County, Missouri, to Bank of America, Clearwater, Florida
5	February 8, 2005	A wire transfer of approximately \$100,000 from Bank of America, Belton, Cass County, Missouri, to Bank of America, Clearwater, Florida
6	March 24, 2005	An e-mail from Columbia, Boone County, Missouri, to Murfreesboro, Tennessee, claiming securities had been received and would be liquidated and funds disbursed

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 7**

(Causing Interstate Travel in Execution  
of a Scheme to Defraud)

23. On or about January 25, 2005, in Boone County, in the Western District of Missouri, and elsewhere, DARYL MILES BROWN, defendant, and others known and unknown to the Grand Jury, having devised and intending to devise a scheme and artifice to defraud

and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, as set forth in paragraph 21, did induce a person or persons to travel and to be transported in interstate commerce from Kansas to Columbia, Boone County, Missouri, in the execution of a scheme and artifice to defraud said person or persons of money and property having a value of \$5,000 or more, that is, two (2) wire transfers totaling approximately \$150,000; all in violation of Title 18, United States Code, Sections 2314 and 2.

**COUNT 8**

(Causing Interstate Travel in Execution  
of a Scheme to Defraud)

24. On or about February 25, 2005, in Boone County, in the Western District of Missouri, and elsewhere, DARYL MILES BROWN and SYLVESTER L. MITCHELL, III, defendants, and others known and unknown to the Grand Jury, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, as set forth in paragraph 21, did induce a person or persons to travel and to be transported in interstate commerce from Boone County, Missouri, to New York, in the execution of a scheme and artifice to defraud said person or persons of money and property having a value of \$5,000 or more, that is, two (2) wire transfers totaling approximately \$100,000; all in violation of Title 18, United States Code, Sections 2314 and 2.

**COUNTS 9-11**

(Monetary Transactions in Criminally Derived Property)

25. The allegations of paragraphs 21 through 24 are realleged and incorporated herein as if fully set forth again.

26. On or about the dates enumerated as to each Count, in Boone County, in the Western District of Missouri, DARYL MILES BROWN, defendant, and others known and unknown to the Grand Jury, did knowingly and willfully engage and attempt to engage in a monetary transaction affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000 which was derived from a specified unlawful activity, namely: a) wire fraud; and b) causing interstate travel in execution of a scheme to defraud; all in violation of Title 18, United States Code, Sections 1343 and 2314, respectively, that is, the defendant conducted and caused to be conducted monetary transactions as made more specific below as to each Count:

<b><u>COUNT</u></b>	<b><u>DATE</u></b>	<b><u>MONETARY TRANSACTION AND APPROXIMATE DOLLAR AMOUNT</u></b>
9	January 19, 2005	A wire transfer in the amount of approximately \$90,000 from Bank of America, Clearwater, Florida, to Bank Star One, Fulton, Callaway County, Missouri
10	February 14, 2005	A wire transfer in the amount of approximately \$50,000 from Bank of America, Clearwater, Florida, to Bank Star One, Fulton, Callaway

County, Missouri

11	April 5, 2005	A wire transfer in the amount of approximately \$30,000 from Bank of America, Clearwater, Florida, to Bank Star One, Fulton, Callaway County, Missouri
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All in violation of Title 18, United States Code, Sections 1957 and 2.

**COUNT 12**

(Conspiracy to Commit Money Laundering)

27. The allegations of paragraphs 21 through 26 are realleged and incorporated herein as if fully set forth again.

28. From at least as early as in or about December 2004, and continuing through an unknown date, but at least on or about September 15, 2005, the exact dates being unknown to the Grand Jury, in the Western District of Missouri, and elsewhere, DARYL MILES BROWN and SYLVESTER L. MITCHELL, III, defendants, and other persons, known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree to engage and attempt to engage in a monetary transaction affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000 which was derived from a specified unlawful activity, namely: a) wire fraud in violation of Title 18, United States Code, Section 1343; b) causing interstate travel in execution of a scheme to defraud, in violation of Title 18, United States Code, Section 2314; and c) to unlawfully transport, transmit

and transfer in interstate commerce goods, wares, merchandise, securities and money of a value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud, in violation of Title 18, United States Code, Section 2314; all in violation of Title 18, United States Code, Sections 1957 and 2. All in violation of Title 18, United States Code, Section 1956(h).

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**COUNT 13**

(Conspiracy to Commit an Offense  
Against the United States)

29. The allegations of paragraphs 5 through 7 are realleged and incorporated herein as if fully set forth again.

30. From at least as early as in or about December 2004, and continuing through an unknown date, but at least on or about September 15, 2005, the exact dates being unknown to the Grand Jury, in the Western District of Missouri, and elsewhere, DARYL MILES BROWN and SYLVESTER L. MITCHELL, III, defendants, and other persons, known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree with each other, and with other persons, known and unknown to the Grand Jury, to commit an offense against the United States, that is,

(a) to devise a scheme and artifice to defraud and for obtaining money and property from investors throughout the United States by means of false and fraudulent pretenses, representations and promises and, for the purpose of executing the scheme and artifice, to transmit and cause to be transmitted in interstate commerce certain signals and sounds by means of wire and telephone communications, in violation of Title 18, United States Code, Section 1343; and

(b) having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, did induce a person or persons to travel and to be transported in interstate commerce in the execution of a scheme and artifice to defraud said person or persons of money and property having a value of \$5,000 or more, in violation of Title 18, United States Code, Section 2314.

OBJECT, MANNER AND MEANS OF THE CONSPIRACY

31. Paragraphs 3-4, inclusive, are realleged as if fully set forth again as the object of the conspiracy.

32. Paragraphs 8-20, inclusive, are realleged as if fully set forth again as the manner and means of the conspiracy.

OVERT ACTS

33. In furtherance of this conspiracy, and to effect its aims and objects, there was committed by one or more of the conspirators, known and unknown to the Grand Jury, at locations within in the Western District of Missouri, and elsewhere, at least one of the following overt acts:

A-G. The wire frauds alleged in Counts 1-6, inclusive, are incorporated herein, and each realleged as a separate overt act as if fully set forth again.

H-I. The causing interstate travel in execution of a scheme to defraud alleged in Counts 7-8, inclusive, are incorporated herein, and each realleged as separate overt acts as if fully set forth again.

J-L. The monetary transactions in criminally derived property alleged in Counts 9-11, inclusive, are incorporated herein, and each realleged as separate overt acts as if fully set forth again.

M. On or about October 12, 2004, BROWN and another person executed an escrow agreement in Clearwater, Florida.



- N. On or about October 13, 2004, another person opened a bank account at the direction of BROWN in Clearwater, Florida.
- O. On or about January 28, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$50,000 from Wells Fargo Bank, Flower Mound, Denton County, Texas, to Bank of America, Clearwater, Florida.
- P. On or about January 28, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$50,000 from Jackson Federal Bank, Apple Valley, San Bernardino County, California, to Bank of America, Clearwater, Florida.
- Q. On or about February 8, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$250,000 from Bank of America, Albuquerque, Bernalillo County, New Mexico, to Bank of America, Clearwater, Florida.
- R. On or about February 8, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$50,000 from Old Point Bank, Hampton, Hampton County, Virginia, to Bank of America, Clearwater, Florida.
- S. On or about February 16, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$50,000 from Banknorth, South Burlington, Chittenden County, Vermont, to Bank of America, Clearwater, Florida.
- T. On or about February 25, 2005, BROWN and MITCHELL met with a potential investor.
- U. On or about February 25, 2005, an investor traveled from Boone County, Missouri, to New York.
- V. On or about February 28, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$100,000 from Bank of America, Clearwater, Florida, to Old Point Bank, Hampton, Hampton County, Virginia.
- W. On or about March 3, 2005, one of the co-conspirators had a conversation with an investor, resulting in the wire

transfer of approximately \$50,000 from Wells Fargo Bank, Flower Mound, Denton County, Texas, to Bank of America, Clearwater, Florida.

- X. On or about March 8, 2005, BROWN or one of the co-conspirators had a conversation with an investor, resulting in the wire transfer of approximately \$50,000 from Overland Park, Johnson County, Kansas, to Bank of America, Clearwater, Florida.
- Y. On or about July 6, 2005, \$3,000 was wire transferred from MITCHELL's account to BROWN's mother's account, all in Boone County, Missouri.
- Z. On or about July 22, 2005, a \$4,000 check was written and given to MITCHELL.
- AA. On or about July 22, 2005, MITCHELL deposited a \$4,000 check into his personal account.
- BB. On or about July 27, 2005, a \$3,000 check was written and given to MITCHELL in Clearwater, Florida.
- CC. On or about July 28, 2005, MITCHELL deposited a \$3,000 check into his personal account.
- DD. On or about August 4, 2005, \$1,000 was wire transferred from MITCHELL's account to BROWN's mother's account, all in Boone County, Missouri.

All in violation of Title 18, United States Code, Section 371.

**A TRUE BILL.**

/S/

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FOREPERSON OF THE GRAND JURY

/S/

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**ANTHONY P. GONZALEZ**

Assistant United States Attorney  
Missouri Bar No. 29922